

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In re Application of)
)
 COMMUNITY EDUCATIONAL ASSOCIATION)
 Holly Hill, Florida)
)
 For a Construction Permit for a)
 New Noncommercial Educational FM)
 Station on Channel 212A)

MM Docket 94-88

File No. BPED-930316MF

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF SECRETARY

To: Honorable Joseph Chachkin
Administrative Law Judge

CONTINGENT MOTION FOR SUSPENSION OF PROCEDURAL DATES

Community Educational Association ("CEA") by its counsel, moves for a suspension of the procedural dates in this proceeding, contingent upon the Presiding Judge's evaluation of CEA's Motion for Summary Decision filed with the Commission on November 22, 1994 and CEA's receipt of a determination from the Federal Aviation Administration addressing the viability of its proposed site.

1. The Hearing Designation Order, DA 94-789, released August 2, 1994 (the "HDO") in this proceeding set the applications of CEA and Cornerstone Community Radio, Inc. ("CCR") for hearing. In addition to the standard non-commercial comparative issues, the HDO specified the following two issues against CEA:

To determine whether CEA is a qualified educational organization proposing an acceptable educational format in compliance with 47 C.F.R. § 73.503(a) of the Commission's Rules.

To determine whether there is a reasonable possibility that the tower height and location proposed by CEA in this proceeding would constitute a hazard to air navigation.

2. The Presiding Judge accepted an engineering amendment CEA filed on August 30, 1994, which eliminated the mutual exclusivity

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between the CEA and CCR applications, allowing the Presiding Judge to grant the CCR application. See Memorandum Opinion and Order, FCC 94M-521, released September 13, 1994. CEA's application remains in this hearing docket pending resolution of the two issues specified against it.

3. With respect to the first issue, CEA timely filed a Motion for Summary Decision with the Commission on November 22, 1994 (the "Motion"). The air hazard issue, however, has been more difficult for CEA to resolve because of the need to coordinate with the Federal Aviation Administration ("FAA"). However, CEA expects a determination from the FAA as to whether or not its proposed site will be a hazard to air navigation some time in early December. CEA submits that pending an analysis of the merits of the Motion, procedural dates in this proceeding should be suspended so that neither the Commission nor CEA is required to invest significant time and resources in preparing for trial on an issue that might be resolved by summary decision. If the Presiding Judge grants summary decision on the first issue, then procedural dates should be suspended pending the FAA's determination concerning CEA's proposed site.

4. CEA has diligently pursued resolution of the air hazard issue. When CEA filed its August 30, 1994 engineering amendment with the FCC, it simultaneously filed with the FAA an FAA Form 7460-1 so that agency could determine whether the proposed site would be a hazard to air navigation. On October 24, 1994, the FAA issued an Acknowledgement of Proposed Construction or Alteration,

stating that absent a further study, the site would be presumed a hazard to air navigation.¹ CEA immediately requested that the further study be commenced and on October 31, 1994, the FAA issued a notice of Aeronautical Study of Proposed Construction or Alteration, which was circulated as required pursuant to FAA rules and procedures.² Comments to the FAA concerning the proposal must be filed no later than November 30, 1994, and a determination from the FAA should be issued shortly thereafter. CEA believes that a determination from the FAA concerning the question of whether or not its proposed site is a hazard to air navigation will be issued before the scheduled hearing date.

5. Pursuant to the Presiding Judge's Order Prior to Prehearing Conference, FCC 94M-476, released August 16, 1994, the hearing in this proceeding is scheduled to commence on December 15, 1994.³ In an effort to conserve Commission and applicant resources, CEA is requesting a suspension of procedural dates until such time as the Presiding Judge evaluates the sufficiency of CEA's Motion and an FAA determination concerning the viability of its

¹ CEA reported receipt of the Acknowledgement in a Petition for Leave to Amend filed October 27, 1994.

² CEA reported receipt of the FAA's notice of Aeronautical Study in a November 17, 1994 Petition for Leave to Amend.


³ Counsel and CEA were preoccupied in preparing the Motion for Summary Decision, which was filed yesterday - the same day the exchange of written direct case exhibits was scheduled. As part of this Motion, CEA requests that the suspension be made effective as of November 22, 1994, so that CEA will not have to file its written direct case until such time as it is determined a trial is necessary, or alternatively, that CEA be given an extension of time until December 1, 1994 in which to file its trial exhibits.

proposed site is issued. The temporary suspension of procedural dates will avoid the necessity of hearings on issues that might best be resolved by summary decision.

6. If the Presiding Judge decides that the § 73.503(a) issue cannot be resolved by summary decision, then CEA would withdraw this request, file its direct written case and proceed to trial on both issues. However, if the Presiding Judge decides that the § 73.503(a) issue can be resolved by summary decision, then a suspension of procedural dates to allow for issuance of an FAA determination which would allow for summary decision on the air hazard issue and quite possible grant of CEA's application without a hearing would be in the public interest.

WHEREFORE, it is respectfully requested that the Presiding Judge suspend procedural dates in the above-referenced proceeding until such time as the FAA issues a determination as to whether or not CEA's proposed site will cause a hazard to air navigation.

Respectfully submitted,
COMMUNITY EDUCATIONAL ASSOCIATION



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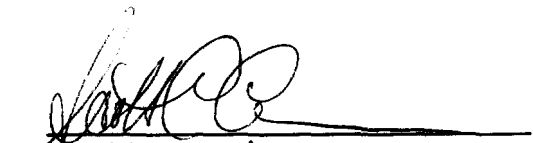
November 23, 1994

CERTIFICATE OF SERVICE

I, Scott C. Cinnamon, do certify that on this 23rd day of November, 1994, a copy of the foregoing **CONTINGENT MOTION FOR SUSPENSION OF PROCEDURAL DATES** was sent via first class mail, postage pre-paid or delivered, as indicated, to the parties set forth below:

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- * - Hand Delivery
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